



**THE COMPANIES ACT, 2013**  
**HAND WRITTEN NOTES BY CJ**

**CA CHAITANYA JAIN**

# REGISTRATION PROCESS :-

## INCORPORATION OF A COMPANY

SPICE

**I** For the whole process - You will require -

- ⊙ DIN - Director Identification Number
- ⊙ DSC - Digital signature certificate.

**II** File an application for incorporation **INC-32**

Documents to be attached →

**III** (a) - MOA + AOA **INC-33 § 34 (e)**.

(b) - TWO DECLARATIONS

**IV** Address (PROPOSED) → Registered Office....

# DECLARATIONS

⇒ declaration No. 1 → FROM PROFESSIONALS - CA/CS/Adv.  
CMA

↓  
All the requirements of the ACT & RULES have been followed - / Complied .  
Should be engaged in the process of formation of Company.

⇒ declaration No. 2 → FROM SUBSCRIBERS & 1<sup>st</sup> DIRECTORS.

- Not convicted for offence → Promotion / Formation / MGT. of Company
- Not been found guilty → 5 YEARS.  
↳ under Co's Act
- CORRECT / COMPLETE / TRUE to the knowledge → DOCUMENTS SUBMITTED.

⇒ PARTICULARS - Each subscriber → Name / Surname / Res. Address  
Nationality  
If Director → DIN

⇒ Mention **INTEREST** → of DIRECTORS  
→ In other Firms / Body Corporates

**(+) WITH CONSENT.**

After attaching all the documents (+) SUBSCRIBER signing → MoA

**(Name + Application) (ON-INC-32) + SPICE (A+B)**

↓  
SUBMIT TO.

**ROC**

↓

**INC-11**

**CERTIFICATE OF INCORPORATION**

# COMPLETE PROCESS OF REGISTRATION OF COMPANY Under SECTION 7

- I. File all the documents & Application with proposed Name
- II. IF REGISTRAR (ROC) satisfied  $\Rightarrow$  ISSUE COI.
- III. Allot CORPORATE IDENTITY NUMBER CIN

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- IV. Maintain copies of all Documents / INFO  $\Rightarrow$  UNTIL DISSOLUTION
- V. FURNISHING FALSE MATERIAL INFORMATION  $\left\{ \begin{array}{l} \text{- At } \textcircled{D} \text{ of INC} \\ \text{- Post INC} \end{array} \right\}$  Promoters  
Directors  
Professionals 447

## AGAINST THE COMPANY

→ Removal of Name

→ Limited Liability to UL

→ Winding up.

→ Make changes in MOA + AOA

in Interest - Public / members / Creditors

↓  
क्या ? TRIBUNAL  
NCLT ..

Before this

opportunity of being heard (OoBH)

# MEMORANDUM OF ASSOCIATION - [SECTION 4]

- CHARTER OF THE COMPANY.
- CONSTITUTION OF THE COMPANY.
- DEFINES - SCOPES/POWERS/OBJECT of the Company.
- FUNDAMENTAL DOCUMENT

**WHY** ? ⇒ BEYOND WHICH CO.'S ACTIONS CAN'T GO.

- INVESTOR - His money is used/utilized for ? RISK ?

- OUTSIDER - SHAREHOLDER / CREDITOR -- before engaging

**PUBLIC DOCUMENT** = SECTION 399

Every person before entering into contract

PRESUMED to have

KNOWLEDGE

# ARTICLE OF ASSOCIATION - [SECTION ]

- INTERNAL MANAGEMENT OF THE COMPANY
- Contains RULES & REGULATIONS of the Company.

- Examples -

Meetings, Shares etc., day to day working.

- Company may include ADDITIONAL MATTERS also  
(जो कभी use में आ सकते हैं)

- May ADOPT ALL OR ANY of the Provisions in AoA  
(as required)

- ENTRENCHMENT - extra layer  
(सख्ती)
    - tough to override
    - Additional safeguard
- [Tell ROC about this]
- Formation  
Amendment  
Pvt. - ALL  
Public - SR

# WHICH ACTS can be RATIFIED (Approved by SH)

UV - Co.  
\$ -  
OBJECT

- ▷ VOID - ab - Initio / NULL
- ▷ Not operative in Law / Not binding (Co. other)
- ▷ Cannot be ratified even (with 100% voting)

UV -  
AOA

- ▷ Company can alter the articles (with SR)
- ▷ It is at the option of shareholders
- ▷ UV - AOA But Intra Vires the MOA

UV -  
DIRECTOR

- ▷ UV - DIRECTORS but Intra Vires the AOA
- ▷ Can be ratified.

JUST STAY UNDER MOA / OBJECT CLAUSE. IF BEYOND DIRECTOR'S POWER / AOA - CAN BE RATIFIED

## Answer for DOCTRINE OF ULTRA VIRES →

- Doctrine of Ultra Vires means going beyond the legal powers.
- Fundamental rule of Company law says that the OBJECT CLAUSE of Company as stated in MOA.
- Any act done beyond the powers of [Directors + MOA (Object clause)]
- \* Inoperative / null & void / void-ab-initio
- \* Not binding on the company
- \* Cannot enforce it against the company.
- Company cannot misapply the funds - if done DIR. are [personally liable]
- cannot TRADE
- neither be sued / nor can sue on it.
- MOA = Section 399 (Public document) - Deemed presumed ✓

# RATIFICATION

(1) Any act done ULTRA VIRES a Company / MoA / Object-  
Clause / Co's Act  $\Rightarrow$  Cannot be Ratified

(2) Sometimes it can be done :-

- UV the powers of directors  $\Rightarrow$  YES (SH can Ratify it)
- UV the AoA  $\Rightarrow$  YES (can ALTER the AoA)
- Ultra vires the Company  
but  
(IRREGULAR)  $\Rightarrow$  YES (can be ratified)  
Shareholders can validate it
- UV the Company  $\Rightarrow$  Cannot be done even with 100%  
Voting.

(3) UV has become Useless / Why? - Object Clause  $\left\{ \begin{array}{l} \text{altered} \\ \text{Special Resolution} \end{array} \right.$

# DOCTRINE OF CONSTRUCTIVE NOTICE

IMPLIED of KNOWLEDGE

PROTECTS  
THE COMPANY FROM  
O/S IGNORANCE

If available  
PUBLICLY

MOA ←

AOA ←

Resolutions ←

PUBLIC documents

with the  
REGISTRAR

DUTY OF AN OUTSIDER ⇒ INSPECT / READ / UNDERSTAND

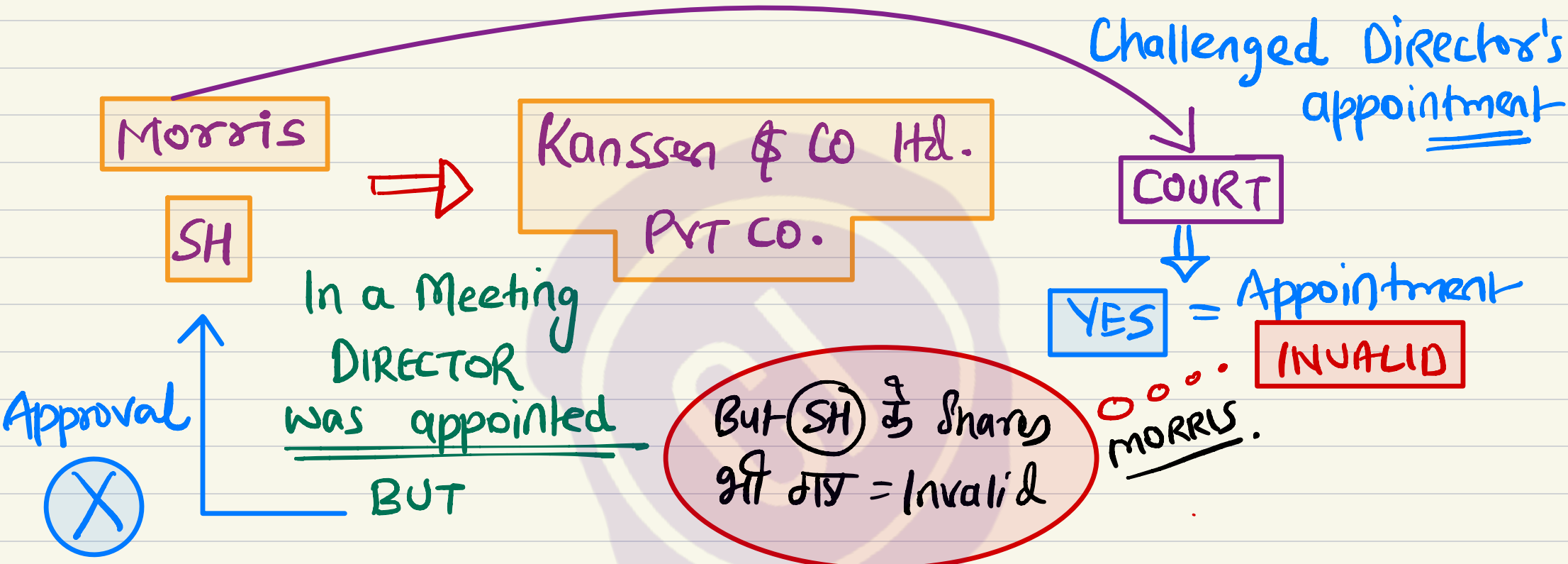
Outsider क्या कर सकता है ? ⇒ NO RIGHTS against the Co.

☞ CAN BE INVOKED BY THE COMPANY.

☞ OPERATES IN THE FAVOUR OF THE COMPANY



# MORRIS VS KANSEEN & CO. LTD.



- IMPROPER Appointment of DIRECTOR ≠ VALID
  - Insider = DIRECTOR & Shareholder - NO
  - Outsider = Third party - YES
- } RELY ON? DIM ?

# HOWARD VS PATENT IVORY CO.

General Rule :- AOA Beyond DIR Powers.

RIGHT?

:- Can be Ratified by Shareholders

CO.

issued  
Additional  
Shares

No SH  
approval

⇒ REQUIRED BY AOA

Beyond their  
Powers

अब बाद में SH ratify  
करने की कोशिश करेंगे ★

COURT

ULTRA VIRES

CANNOT DO

AS Shareholders are  
INSIDERS here

Apply Some Jor :-

DIR

← Got debentures

⇒ Lent money

No  
Resolution